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**FISCAL IMPACT STATEMENT**

**LS 6174**

**BILL NUMBER:** HB 1258

**NOTE PREPARED:** Jan 7, 2012

**BILL AMENDED:**

**SUBJECT:** Various Estate Planning Matters.

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Inheritance Tax Transferees:* This bill specifies that an individual holding a beneficial or ownership interest in an entity is considered the transferee when a transferor makes a transfer subject to the Inheritance Tax to the entity. It provides that the individual is liable for the same percentage of the Inheritance Tax as the individual's percentage of beneficial or ownership interest in the entity.

*Priority of Claims:* The bill provides that reasonable funeral expenses have priority over claims to recover supplemental assistance for the aged and Medicaid from a recipient's estate. (Current law provides that funeral expenses in amounts of \$550 or less have priority over a claim for the recovery of aged assistance and that funeral expenses in amounts of \$350 or less have priority over a claim for the recovery of Medicaid.) It eliminates authority to file a recovery claim against the estate of the recipient's spouse. It specifies that for purposes of the Medicaid recovery statute, costs of administration include taxes, penalties, and interest paid by the estate. It also provides that when an estate's resources are insufficient to pay all claims, the amount given priority for reasonable funeral expenses is not subject to any reductions for various benefits received by the decedent. The bill provides that costs of administration include the fee of a surrogate attorney for purposes of determining the priority of claims when an estate's resources are insufficient to pay all claims.

*Rules of Construction:* The bill eliminates rules of will construction that applied only to decedents dying in 2010. It repeals rules of trust construction that applied only to decedents dying in 2010.

*Foreign Wills:* The bill authorizes foreign wills to be probated after the expiration of the probate deadlines for the same limited purposes for which Indiana wills may be probated after the deadlines.

*Standby Guardian:* The bill eliminates the requirement that a declaration designating a standby guardian

include the Social Security number of the child or protected person. It specifies that a standby guardian has all of the powers granted by the guardianship statute.

*Amendments to the Trust Code:* The bill provides that amendments to the trust code apply to trusts created prior to the effective date of the amendment unless certain adverse events would occur because of the application of the amendment.

*Transfer on Death:* The bill provides that amendments to the transfer on death (TOD) statute apply to TOD transfers created before the effective date of the amendment. It specifies that a testamentary trust receiving a TOD transfer is considered to have been in existence as of the owner's death if the owner's last will and testament is admitted to probate.

*Unauthorized Practice of Law:* The bill provides that the practice of law by a person who is not an attorney is considered racketeering activity for purposes of the law concerning racketeer-influenced and corrupt organizations.

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

**Effective Date:** Upon passage; July 1, 2012.

**Explanation of State Expenditures:** *Inheritance Tax Transferees:* If this bill reduces Inheritance Tax revenue, expenditures from the state General Fund may increase for Inheritance Tax replacement payments to counties. (See *Explanation of Local Revenues* for an explanation of county revenue loss and replacement procedures.)

*Unauthorized Practice of Law:* This bill is expected to have minimal impact on the Department of Correction (DOC) Population. Under current law, a person can be charged with a Class B misdemeanor for practicing law without a license. The number of persons who practice law without a license is not known.

There are also no data available to indicate if more people would be convicted of corrupt business influence, a Class C felony, if practicing law without being an attorney is considered a racketeering activity. During CY 2010, five offenders were committed to DOC for racketeering activity.

Racketeering activity can be charged when there are at least two crimes that have been committed that have the same or similar intent, result, accomplice, victim, or method of commission. The two or more crimes cannot be isolated events.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$18,836 in FY 2011. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,318 annually, or \$9.09 daily, per prisoner. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

**Explanation of State Revenues:** *Priority of Claims - Medicaid:* The Office of Medicaid Policy and Planning (OMPP) has estimated this provision may result in the annual loss of \$1.2 M in state collections. The bill would allow claims for funeral expenses in excess of the current allowance of \$350 to be a preferred claim over the state's medical assistance claim. The bill provides that claims for "reasonable" funeral expenses be

allowed before recoveries of Medicaid expenses. A judge will make the determination of what are “reasonable” funeral expenses. The OMPP has estimated that the state may stand to lose all recoveries from estates that have funeral expenses paid from the assets of the estate.

The bill also eliminates the OMPP’s ability to file a claim to recover the expenses of a deceased spouse against the estate of the recipient’s spouse. OMPP did not provide recovery data concerning the estates of spouses of deceased recipients. The fiscal impact of this provision is indeterminate.

*Inheritance Tax Transferees:* This bill could reduce Inheritance Tax revenue if transfers subject to the Inheritance Tax that would have been considered transfers to entities are now taxed as though the transferee is an individual. The impact is indeterminable.

Transfers that would have likely been taxed as Class C transfers could be taxed as Class A or Class B transfers, depending upon the beneficiary’s relationship to the decedent. This could reduce the amount of tax owed because of the exemptions allowed for each class. The current exemptions are \$100,000 for Class A transferees, \$500 for Class B transferees, and \$100 for Class C transferees.

*Unauthorized Practice of Law:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class C felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

*Background Information (Priority of Claims - Medicaid)-* OMPP reported that historically, the average Medicaid claim against a recipient’s estate was \$41,664 and that the average collection was \$4,464. The state annually closes about 2,700 estates, recovering \$11 M -\$13 M in total federal and state dollars. The federal Trade Commission reports the cost of a basic traditional funeral is approximately \$6,000. If a judge determines \$6,000 to be reasonable funeral costs, there may be little or no remaining value in an estate from which the state may recover expenses.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 34% for most services. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 66%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

*Background Information (Inheritance Tax Transferees)* - Class A transferees include parents, grandparents, children, stepchildren, and grandchildren. Class B transferees include sisters, brothers, nieces, nephews, daughters-in-law, and sons-in-law. Class C transferees include aunts, uncles, and all other transferees that are neither Class A or Class B. About 99.2% of total Inheritance Tax collections are from Indiana residents. Inheritance Tax revenue is distributed as follows for tax paid on transfers by resident decedents: (1) 92% to the state General Fund; and (2) 8% to the collecting county, which is the county of domicile of the resident decedent. All Inheritance Tax paid on transfers by nonresident decedents is distributed to the state General Fund.

**Explanation of Local Expenditures:** *Unauthorized Practice of Law:* If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class B misdemeanor is up to 180 days. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

**Explanation of Local Revenues:** *Inheritance Tax Transferees*: Because counties retain 8% of the Inheritance Tax collected on transfers made by Indiana residents, they could experience a decrease in revenue. Also, counties are guaranteed a statutorily determined amount from the Inheritance Tax under P.L.254-1997. If revenue falls short of the statutorily guaranteed amounts, then replacement payments are paid to the counties with shortages from the state General Fund. Replacement payments are made in the fiscal year following the fiscal year in which counties experience revenue shortages.

*Unauthorized Practice of Law*: Court fees for both misdemeanors and felonies are \$120.

**Background Information (Inheritance Tax Transferees)** - P.L. 254-1997 increased the Class A exemption to \$100,000, effective July 1, 1997, and required the state to annually transfer money from the state General Fund to counties to replace county Inheritance Tax revenue lost due to the exemption increase. The replacement provision guarantees that each county receive an amount of Inheritance Tax revenue equal to the five-year annual average amount of Inheritance Tax received by that county from FY 1991 to FY 1997, excluding the highest year and lowest year. The total annual guarantee to counties is approximately \$7.4 M, with replacement payments averaging about \$113,000 since FY 2006.

**State Agencies Affected:** DOC; OMPP, Family and Social Services Administration.

**Local Agencies Affected:** Counties; trial courts; local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association; DOC; OMPP, FSSA. Funeral costs at Federal Trade Commission @ <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm>.

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